No. 1864

IN THE

United States Circuit Court of Appeals

FOR THE

NINTH CIRCUIT

JOHN S. SEATTER
vs.
DISTRICT COURT,
DISTRICT OF ALASKA,
DIVISION No. 1.
E. M. BARNES, Attorney for Plaintiff.

PLAINTIFF'S BRIEF ON WRIT OF CERTIORARI

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STATEMENT

This is an action for a writ of certiorari. The defendant rendered a judgment of ejectment against this plaintiff in said District Court, District of Alaska, Division No. 1, at Juneau, Alaska. The plaintiff in said District Court was the Evergreen Cemetery Association, a protestant in the United States Land Office, at Juneau, Alaska, against this plaintiff, who was a mineral claimant, seeking title to mineral land.

On filing the protest in the land office above named said protestant became plaintiff and this plaintiff was defendant in said above named district court.

The plaintiff here, defendant there, asks for a dismissal of said cause because said district court had no jurisdiction to hear the said action, whereupon said Evergreen Cemetery Association asked leave to file a supplemental complaint which was granted. The supplemental complaint consisted of a decision of the Secretary of the Interior on said protest. Later on the said District court entered up a judgment of ejectment, in favor of C. W Young, B. M. Behrends, John G. Heid, John Olds and R. P. Nelson, trustees of the Evergreen Cemetery Association against this plaintiff, the defendant therein, not appearing.

ERRORS RELIED ON

A protestant has no standing in court in matters pertaining to mineral land, arising from controversies in the land office. All matters in the land office are stayed until the courts adjudication has been handed down and in these are the only cases in which the courts of Alaska have jurisdiction to act. The complaint did not state facts sufficient to constitute a cause of action. Hence the court has no jurisdiction to enter said judgment of ejectment.

ARGUMENT

A protestant has no standing in court

Morrison's Mining Rights, page 285 and authorities:

"Where courts have jurisdiction the proceedings in land office are stayed."

United States Rev. Statute 2326:

"If the petitioner presents such a case in his petition that on a demurrer the court would render a

judgment in his favor, it is undoubted jurisdiction."

Gregnors Lessee vs. Astor, 6 *Pet.* 109.
Shrivers Leesee vs. Lynch, 2 *How.* 43.
Elliott vs. Pierson, 1 *Pet.* 340.
Alabama Conference vs. Price, 42 *Ala.* 49.
Carter vs. Waugh, 42 *Ala.* 452.
Satcher vs. Satcher, administrator, 41 *Ala.* 26.
Cooper vs. Sunderland, 3 *Iowa* 114.
Fraser vs. Steenrod, 7 *Iowa* 339.
Long vs. Burnett, 13 *Iowa* 28.
Morrow vs. Mead, 4 *Iowa* 77.
Moore vs. Neil, 39 *Ill.* 256.
Torrance vs. Torrance, 53 *Penn. St.* 505.
Sheldon vs. Newton, 3 *Ohio St.* 495.
Stokes vs. Middleton, 4 *Dutch* 32.
Gerard vs. Johnson, 12 *Ind.* 606.
Nede vs. Edmont, 4 *Ind.* 468.
Jackson vs. Robinson, 4 *Wend.* 437.
Finch vs. Edmondson, 9 *Texas* 504.

In a legal action plaintiff can only obtain the relief he prays for. The complaint therefor is judged by the prayer. ~~A suit on an adverse claim is an equitable proceeding. An action for ejectment is a legal action. Facts stated to support one cause are not facts sufficient to give relief in the other.~~ The prayer in this complaint shows conclusively the action in the trial court was an action of ejectment.

RECORD P

Two elements are absolutely necessary in an action of ejectment—possession by plaintiff and ouster

by defendant--nowhere does plaintiff allege either possession in themselves or ouster by defendant.

Allegation V of their complaint alleges: "That said plaintiff claims the right to occupy and possess said premises and is entitled to the possession thereof by virtue of full compliance with the local laws and rules of the citizens of the United States and said Juneau, Alaska, for the occupation and possession of squatter's rights and by the actual prior possession of all of said property located upon the public domain of the United States for cemetery purposes.

RECORD P

I presume it is understood in every place, except Juneau, that Congress has the sole disposal of the land in all territories and districts of the United States. Plaintiffs don't allege possession, they only allege that "they claim the right to occupy." Nowhere is an ouster alleged. Par. VII of their complaint alleges the plaintiffs filing application for patent to mineral land.

RECORD P

Par. VIII of their complaint is as follows. "That this suit is brought in support of said adverse claim." Who ever heard of ~~a suit~~ for ~~adverse~~ claiming possession of the premises or a writ of ejectment issue in ~~a suit~~ for ~~adverse~~—a legal remedy in an ~~equitable suit~~? An adverse is to decide the right as to who is entitled to ~~purchase~~ between two mineral claimants.

The prayer of their complaint is: "For the recovery and possession of said parcel of said cemetery—

for Five Hundred dollars damages." Is that the prayer of an ~~adverse~~, or is that the relief an ~~adverse~~ claimant is entitled to? They do not ask for general relief, they treated the case as an action at law, the court treated it as an action at law, and on a ruling of this honorable court, in a case from Fairbanks, it held as a case was classed in the court below so it would be classed in this honorable court. I forget the citation, but that is the substance of the decision. Then this is an action of ejectment. Now, let us look at the supplemental complaint:

"Department of the Interior, Washington, Feb. 15, 1907.

"C. F. Shelton, et al

vs.

John F. Seatter.

The Commissioner of the General Land Office,

Sir:

Nov. 14, 1904 x x x x John S. Seatter filed in local land office at Juneau, an application for patent for mineral placer on lower Juneau mountain lode claim. x x x

Against this patent application, several protests were filed by C. F. Shelton, and the Evergreen Cemetery Association in which protests were charged among other things the land was non-mineral in character. x x x This department is of the opinion that the land does not contain mineral in such quantities as to render it more valuable for mining than for agricultural purposes. x x "

F. S. HITCHCOCK, Secretary.

RECORD P

Going back to allegation This protest is what this action of ejectment is brought in support of. They claim no rights in their protest—not even they are in possession, simply as any citizen has the right. They protest against the issuance of a patent.

They do not profess to have any standing, except as a protestant and the law is, a protestant has no standing in court. But why take up the time of the court in this? The complaint does not state facts sufficient to constitute a cause of action. A demurrer would lie almost any way it was worded against this complaint.

Nowhere by any law is the District Court of Alaska given jurisdiction to enter a judgment of ejectment in favor of a protestant against a mineral claimant. This plaintiff as defendant below set up in his answer in his first affirmative defense: "That this court is without jurisdiction to hear or determine this cause of action alleged to be set out in plaintiff's complaint," and also set up a discovery since the hearing named in plaintiffs complaint.

The trial court would not countenance holding the decision of the land office that on Nov. 14, 1904 the land was non-mineral was not res adjudicata, and though this plaintiff on Nov. 15, 1904, should by going a foot deeper uncover a gravel bed so rich that a cleanup must be made each evening and all the riffles of sixteen boxes filled with gold dust and nuggets worth nineteen dollars per ounce, nevertheless he

could not plead it and the government never could obtain the $2.50 per acre for the mineral ground it was, but must give it to some homesteader for nothing, if any of them would ask for it and these protestants set up no right to it. Clothing that secretary of the interior with X Rays, looking into the bowels of the earth and saying never and from henceforth will any mineral come from this land. No mineral claimant can ever set up a right to it.

With this the law in Alaska, is it surprising the Honorable Secretary is loath to give up his job? He and the Honorable Judge were at one time ~~cronies~~.

Mr. Lindley will have to go to school again if that is the law. Every lawyer, entitled to charge a fee for an opinion on mining law, knows that every decision of the land office from Alpha to Omega, says those decisions of the land office are not of effect beyond the day of the hearing in the local land office. When the trial court made the ruling above referred to, I was reminded of a criminal case I once had in California before a justice of the peace named Chas. Ziegler. The statutes then permitted a change of venue, when a justice was prejudiced and the number of changes of venue were not limited. This case came to Charley on a change of venue. Another affidavit and another motion to change was made before him. Charley wanted to try the case—wanted to find the defendant guilty, wanted to sentence him. He knew the affidavit which stated he was prejudiced was true, so to ease his conscience he announced: "The law applicable to this case has been

exhausted." And he did try, convict and sentence the defendant.

There is no allegation that the plaintiff in the trial court is now entitled to the possession of the premises.

If they are not now entitled to the possession the complaint does not state facts sufficient to give the court jurisdiction to award possession to them or to hear or determine this case.

From the allegations of the supplemental complaint, the trial court waited for the land office to act. In these kind of cases the jurisdiction of the land office is separate and distinct from the court.

Nowhere have I been able to find any law giving the district court of Alaska any jurisdiction over these kind of cases.

The character of the land belongs exclusively to the land office—that is why a protestant has no standing in court.

Courts deal with titles (Possession)

I have been unable to find any law giving corporate powers to any one at the time this suit was brought.

The supplemental complaint is for matters that have arisen since filing the original complaint. Now, then, treating this supplemental complaint as it is, they are simply protestants not in possession, not entitled to possession, never ousted and claim no right whatever to the land or any portion of it. The more I study this case the more I think the law applicable thereto was exhausted before the complaint

was filed. This is the third void judgment of this district court I have presented, I guess that void judgments are not comparable, when they are void, they are just void and that is the end of it. In this action there is no plaintiff who has any standing in court or right to sue. If there was a plaintiff the facts alleged, do not give the court jurisdiction to act.

The proceedings are under a special statute, no, not under any statute, they are endeavoring to impress them with the character of being under a special act. If they were under that special act there would be no supplemental complaint, because the act in relation to adverse claims especially enjoins the land office acting until the matters have been adjudicated by the courts.

In the case at bar the foundation of the action is an adjudication from the land office. In the decision, the following language is used:

"The plaintiffs (in the trial court) filed their adverse claim in the land office and this suit is brought in support thereof."

An action of ejectment brought in support of an ~~adverse suit.~~ The worst fooled of all men is the one who fools himself. The job turned out by a counsel, who does not understand the law of pleadings and a court, a raw hand at mining litigation, resembles, I fancy, a job a printer would turn out in making a pair of pants.

I was trying a mining case in this district court, an ejectment action. My fee was contingent; the

defendant on the trial admitted the ouster, already I felt the musical gingle of the twenties in my pocket —and, well, as we get older there is a good deal of anticipation instead of realization. The honorable district court took the case under advisement, in its decision, about the following language was used: "Plaintiff seeks a recovery on the admission of the ouster by defendant—Now ouster is of two kinds, lawful and unlawful, the defendant did not say which kind he admitted. The rule of law being to give the defendant the benefit of a doubt, I find the ouster to be a lawful ouster, and judgment will be entered for the defendant." There was a feeling of absentness, where in thought, my twenties had been. I considered *that* decision "fierce"—The world progresses and it seems that ignorance keeps abreast of the times.

Chief Justice Beatty, now of the Supreme court of California, at one time in one of the courts over which he was chief justice in one of the states to which that court belonged said of and ~~covering~~ a ~~collateral.~~ His decisions are pernicious."

A lawyer must not say that of a courts decisions— I have never found any law against his thinking.

Respectfully Submitted,

E. M. BARNES,

Attorney for Plaintiff.